JOHN D. POFFENBERGER
BRUCE TITTEL
DONALD F. FREI
DAVID J. JOSEPHIC
A. RALPH NAVARO, JR.
DAVID S. STALLARD
J. ROBERT CHAMBERS
GREGORY J. LUNN
KURT L. GROSSMAN
CLEMENT H. LUKEN, JR.
THOMAS J. BURGER
GREGORY F. AHRENS
WAYNE L. JACOBS
KURT A. SUMME
KEVIN G. ROONEY
KEITH R. HAUPT
THEODORE R. REMAKLUS
THOMAS W. HUMPHREY
SCOTT A. STINEBRUNER

WOOD, HERRON & EVANS, L.L.P.
2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-2917
TELEPHONE: (513) 241-2324
FACSIMILE (513) 421-7269
EMAIL: info@whepatent.com

PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION LAW AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968
TRUMAN A. HERRON 1935-1976
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN
CLEVELAND EBY

DAVID E. PRITCHARD
DAVID H. BRINKMAN
J. DWIGHT POFFENBERGER, JR.
BEVERLY A. LYMAN, Ph.D.
KATHRYN E. SMITH
KRISTI L. DAVIDSON
P. ANDREW BLATT, Ph.D.
DAVID E. JEFFERIES
DAVID E. FRANKLIN
WILLIAM R. ALLEN, Ph.D
JOHN PAUL DAVIS
DOUGLAS A. SCHOLER
FRANK M. MUNGO (KY BAR)
BRETT A. SCHATZ
ALLISON A. DAVIDSON

TECHNICAL ADVISORS
HENRY M. LABODA, Ph.D.
LARRY D. MOORE, B.S.E.E.
DAVID W. DORTON, M.M.E.
RONALD J. RICHTER, M.D.
G. PRABHAKAR REDDY, M.S.CH.

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TO: Assistant Commissioner for Patents
Examiner Cheryl Juska

Fax No: 703/872-9310

Date: July 19, 2001

Pages (including cover page): 5

FROM: Keith R. Haupt, Esq.
Reg. No. 37,638

Re: Our Ref.: STAN-09RE
Serial No.: 09/558,329
Filed: 04/25/00
Group Art: 1771

I hereby certify that this correspondence and the enclosures are being faxed to (703) 872-9310, Attn: Examiner Cheryl Juska at office of the Assistant Commissioner of Patents and Trademarks, Washington, D.C. 20231 on July 19, 2001.

Keith R. Haupt, Esq., Reg. No. 37,638 Date 7/19/01

PATENT

Serial No.:	09/558,329
Filed:	April 25, 2000
Applicant:	Randolph A. Stern and Michael N. Byles
Title:	Stitch Bonded Fabric and Fluid-Retaining Fabric Made Therewith
Examiner:	Cheryl Juska
Group Art Unit:	1771
Attorney Docket:	STAN-09RE

Cincinnati, OH 45202 July 19, 2001

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

REQUEST TO WITHDRAW FINALITY OF OFFICE ACTION

On April 26, 2001, a final Office Action was issued in the above-identified reissue application. Among other things, the final Office Action stated that the Oath/Declaration is defective as well as maintaining rejections under 35 U.S.C. §§ 102, 103 and 112 from the prior Office Action dated September 22, 2000. Applicants hereby respectfully request that the "finality" of the Office Action of April 26, 2001 be withdrawn for the following reasons.

On p. 11 at ¶ 31 of the April 26 Office Action, the Examiner explains her reasons for disagreeing with applicants' position that the present invention is distinguished from the prior art, specifically the Lefkowitz patent. The rejected claims include the term "yarn face" and the Examiner states that:

> "the term yarn face does not limit the spacing of the yarn stitches. In a broad sense, said term merely limits the stitch yarns to being on the surface of said web (as opposed to the 'embedded' stitches of Sternlieb). Said term does not imply any spacing of said stitch yarns. Thus, the features upon which applicant relies (i.e., yarn faces which are effectively continuous such that the web is not exposed) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims." Office Action, 4/26/01, ¶ 31.

Similar analysis is provided by the Examiner with respect to the Ott and Gillies rejections. Clearly, the Examiner asserts that the claims do not adequately recite distinguishing features of the yarn face with respect to the prior art although such features are shown in the specification.

Previously, the undersigned attorney interviewed the Examiner on December 21, 2000 to discuss the yarn face feature of this invention with respect to the prior art. In the Interview Summary prepared and signed by the Examiner, the Examiner stated:

> "With regard to the prior art rejections, Haupt noted col. 2, lines 48-65 of the present disclosure, wherein the top and bottom yarn faces are described. Haupt argued said faces are a distinguishing feature over the cited prior art. I agreed to review the prior art with this feature in mind. Upon my agreement of said distinguishing feature, we agreed to amend all independent claims, if needed to reflect said feature." Interview Summary, 12/21/00 (emphasis added).

At the interview, applicants' attorney offered to amend the claims to specifically include the detailed description of the yarn face provided in the specification. At that time, the Examiner declined such an offer as reflected in the

Interview Summary text repeated above. Subsequently, the Examiner states in the April 26th Office Action that the yarn face details are not provided in the claims although they are in the specification and, as such, the claims do not distinguish over the prior art. Nevertheless, applicant has been informed by the Examiner that she will not enter any amendments "after final" to include the features from the specification as suggested in the final Office Action. Applicants respectfully asserts that we should now have an opportunity to amend the claims as agreed to at the interview and reflected in the Interview Summary.

Applicants respectfully assert that making the most recent Office Action "final" and refusing to enter amendments which were the subject of a prior agreement with the Examiner is both inconsistent and improper. In December at the interview, applicants' attorney was informed by the Examiner that amendments should not be made at that time until further review to verify that the features at issue do in fact distinguish over the prior art. Subsequently, a final Office Action was received in which the claims were rejected because those features were not included explicitly in the claims and we were later informed that after final amendments would not be entered in this application. As such, applicants request that the finality of the Office Action be withdrawn so that an opportunity to amend the claims as agreed to by the Examiner in the Interview Summary is available.

Furthermore, the Office Action of April 26th includes an objection to the Oath/Declaration. This issue was not raised in the first Office Action, although the Oath/Declaration was on file at that time. As such, applicant respectfully asserts that

raising a new objection/rejection in a final Office Action, and particularly an objection/rejection which was available previously, is not proper. Applicants respectfully requests that the finality of the Office Action be withdrawn for this additional reason so that applicants have an opportunity to address this matter.

Since this is a reissue application, applicants respectfully request prompt attention to this request so that appropriate action can be taken and that the remaining patent term be preserved. If the Examiner has any questions or would like to discuss this matter further, she is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By _____
Keith R. Haupt, Esq.
Reg. No. 37,638

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202-2917
(513) 241-2324 voice
(513) 421-7269 fax
K:\STAN\09RE\RESPONSE 2nd.wpd